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Justice Brewer in *Frisbie v. U. S.* (1895) 157 U. S. 160, and the contrary view in *U. S. v. Kilpatrick* (1883) 16 Fed. 765, was avowedly based on the state practice in North Carolina. In the States too, the weight of authority supports the decision in the principal case. *Ward v. State* (1829) 2 Mo. 120; *State v. Terry* (1860) 30 Mo. 368; *Commonwealth v. Smyth* (1853) 11 Cush. 473; *State v. Wolcott* (1851) 21 Conn. 272; *State v. Magrath* (1882) 44 N. J. L. 227; *Blaney v. Maryland* (1891) 74 Md. 153. Some state courts, however, following the English practice, still require a specific charge. *In re Lester* (1886) 77 Ga. 143; *Lewis v. The Board* (1876) 74 N. C. 194.

The chief objection to the doctrine of the principal case is the danger that the grand jury may abuse its powers, a danger more imaginary than real. For it is only through the courts that the attendance of witnesses may be enforced and punishment inflicted for refusal to answer. *Commonwealth v. Bannon* (1867) 97 Mass. 214; *Heard v. Pierce* (1851) 8 Cush. 338; *Ward v. State*, *supra*. The possession of the inquisitorial power, under such restraint by the courts, would seem to be of the greatest service to the people in the enforcement of the laws.

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TRUSTS UPON PERSONAL CONFIDENCE.—It is now a well-settled rule of equity, that a trust will not be allowed to fail for want of a trustee. Perry, 5th ed., § 276*a* and cases cited; Ames Cases on Trusts, p. 230, n. 2. Even where a trust deed has failed to name a trustee, the court has inherent jurisdiction to appoint one. *Dodkin v. Brunt* (1868) L. R. 6 Eq. 580; Ames, p. 226, and cases cited. In every trust, certain general powers, although not expressly mentioned in the instrument creating the trust, are conferred upon the trustees by implication, for the successful execution of the trust, Perry § 473; *e.g.* the power to reserve trust lands, *Lerow v. Wilmarth & Trustee* (Mass. 1864) 9 Allen 382, to make repairs, *Sohier v. Eldredge* (1869) 103 Mass. 345, or to compromise debts due to the trust estate, *Forshaw v. Higginson* (1857) 8 DeG. M. & G. 827. Although these powers involve the exercise of discretion, they attach to the office, being connected with the management of the trust estate, and pass with the title to a subsequent trustee. They are to be distinguished from such special powers as lie in the personal confidence of the trustee named by the creator of the trust. The question is one of intention, to be ascertained from the nature and objects of the trust. *Trust Co. v. Sutro* (1892) 75 Md. 361, 365. The doctrine is founded on reason and ancient authority, that a discretion vested in the original trustee, cannot be exercised by the court or by a new trustee; for example, a discretion to settle a fund upon marriage with the trustee's consent, *Clarke v. Parker* (1812) 19 Ves. 1, or to pay over the income when the cestui's conduct should be satisfactory to the trustees. *Walker v. Walker* (1820) 5 Madd. 424, see also *Cochran v. Paris* (Va. 1854) 11 Gratt. 348, 356, or to pay an annuity unless circumstances render it inexpedient, *French v. Davidson et al.* (1818) 3 Madd. 396, or to increase an

annuity in the trustees' discretion. *Hull v. Hull* (1862) 24 N. Y. 647. For a similar reason a discretionary "power" not coupled with a duty, can be exercised only by the donee of the power. *Coleman v. Beach* (1885) 97 N. Y. 545. A trust solely upon personal discretion terminates upon the death of the trustee. *Gambell v. Trippe* (1892) 75 Md. 252; *Security Co. v. Snow et al.* (1898) 70 Conn. 288; unless the discretion is expressly delegated, as *e. g.*, to trustees "or their successors," *Lorings v. Marsh* (1867) 6 Wall. 337, 353, or to "whoever shall execute" a will, *Royce v. Adams* (1890) 123 N. Y. 402, or to the "trustees for the time being," *Bartley v. Bartley* (1855) 3 Drew. 384. So a trust to pay so much of the income and principal as the trustee should deem expedient, if ever, terminates upon the trustee's death, and their being no intention that the cestui should of necessity ultimately receive the entire fund, and no gift over, the testator died intestate as to the trust fund. *Benedict v. Dunning* (N. Y. 1906) 110 App. Div. 303. *Hadley v. Hadley* (1896) 147 Ind. 423 in accord.

The court will, however, restrain a clear abuse of discretion, *Casidy v. Hynion* (1886) 44 Ohio 530; see also *Read v. Patterson* (1888) 44 N. J. Eq. 211; and will if possible interpret a power as a trust, not a naked discretion. *Minors v. Battison* (1876) 1 App. Cas. 428, 438; *Aldrich v. Aldrich* (1878) 12 R. I. 141. In a few classes of cases, a discretionary trust will not terminate upon the death of the trustee named. When the discretion is in apportionment among specified members of a class, the court will apportion equally. *Izod v. Izod* (1863) 32 Beav. 242. When the discretion is to pay to such kindred as may seem fit, the court will follow the Statute of Distributions. *Cole v. Wade* (1806) 16 Ves. 27; see also *Portsmouth v. Shackford* (1866) 46 N. H. 423, 426. Where the discretion is in the selection of charities to be benefited, in England, the trust can be enforced only by the prerogative of the crown as *parens patriae*, under the sign manual. *Attorney-General v. Berryman* (1755) 1 Dickens 168. It would seem that the same result could be reached by the Attorney-General in those States where a trust for charity is not void at the outset for indefiniteness. See *Baptist Ass'n v. Hart's Executors* (1819) 4 Wheat. 1, and App. n. 1; *Fontain v. Ravenel* (1854) 17 How. U. S. 369, interpreting statutory jurisdiction of equity, though apparently contra, is difficult to support. Under the Massachusetts statute (Rev. St. 1902 ch. 147 § 6) giving the newly appointed trustee "the same powers and duties \* \* \* as if he had been originally appointed," it has been held that a discretion to withhold the income is not to be considered as a personal confidence in the original trustee. *Wemyss v. White* (1893) 159 Mass. 484, 486. On the other hand, for a broad interpretation of a "personal" trust, see *Hinckley v. Hinckley* (1887) 79 Me. 320.

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TERRITORIAL LIMITATION OF INJUNCTION IN UNFAIR COMPETITION.  
—Equity restrains the infringement of a trade-mark on the ground that the owner has a right of property in such mark, *Bass, &c. Co. v. Feiganspan* (1899) 96 Fed. 206; Browne on Trade-Marks §§ 32,